

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, OCTOBER 17, 2006

The Council of the City of San José convened in regular session at 9:30 a.m. in the Mayor's Conference Room T1841, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room T1841, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of: (1) City of San José v. Donati Bascom Building LLC (District 6); (2) Chong v. Carter, et al; (3) San José Silicon Valley Chamber of Commerce Political Action Committee et al. v. City of San José, et al. (B) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) Operating Engineers, Local 3; (2) International Association of Firefighters (IAFF).

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:40 a.m. and reconvened at 1:33 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

INVOCATION

Students Natalia Sorci, Misa Yoshida, Matthew Janicki, Paris Bristow, Amy Apostol, Lucas Watson, Aviv Brender, Robin, Curtis and Deven Gross, of Carlton Elementary School Music Program performed. Kristen Engineer, Director. (District 9)

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Williams, seconded by Vice Mayor Chavez and carried unanimously, the Orders of the Day and the Amended Agenda were approved with Item 1.2 deferred to October 24, 2006. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the California National Guard for their dedication to the safety and security of residents and travelers to and from San José, and the greater Silicon Valley. (Airport)

Action: Mayor Gonzales, Council Member Reed, Director of the Office of Economic Development Paul Krutko and Director of Aviation Services William Sherry recognized and commended the California National Guard for their dedication to the safety and security of residents of San José and of travelers to San José.

**1.2 Presentation of a commendation to the Italian American Heritage Foundation on the occasion of the 26th Annual Italian Family *Festa* for its dedication to honoring Italian history and culture and its outstanding contributions to the San José community. (Chavez/Cortese/LeZotte)
(Rules Committee referral 10/4/06)**

Action: Deferred to 10/24/06 per Orders of the Day.

**1.3 Presentation of a proclamation declaring October 2006 as “Employment of Persons with Disabilities Awareness Month” in the City of San José. (LeZotte)
(Rules Committee referral 10/4/06)**

Action: Mayor Gonzales and Council Member LeZotte declared October 2006 as “Employment of Persons with Disabilities Awareness Month” in the City of San José.

**1.4 Presentation of a proclamation declaring October 16, 2006 as “Feral Cat Day” in the City of San José. (Reed)
(Rules Committee referral 10/4/06)**

Action: Mayor Gonzales and Council Member Reed declared October 16, 2005 as “Feral Cat Day” in the City of San José.

- 1.5 Presentation of a proclamation recognizing the month of October 2006 as “Filipino American History Month” in the City of San José. (Campos)**
(Rules Committee referral 10/4/06)

Action: Dropped.

- 1.6 Presentation of a commendation to Angie Horne for her extraordinary volunteer services to the Bagby Elementary School District and the residents of San José. (Yeager)**
(Rules Committee referral 10/4/06)

Action: Deferred.

- 1.7 Presentation of a proclamation declaring October 2006 as “National Breast Cancer Awareness Month”. (Campos)**
(Rules Committee referral 10/11/06)

Action: Mayor Gonzales and Council Member Campos declared October 16, 2006 as “National Breast Cancer Awareness Month”.

- 1.8 Presentation of a commendation to SunPower Corporation for its important contributions to the San José economy. (Mayor/Reed)**
(Orders of the Day)

Action: Mayor Gonzales and Council Member Reed recognized and commended SunPower Corporation for its invaluable contributions to the economy of the City of San José.

CONSENT CALENDAR

Upon motion by Vice Mayor Chavez, seconded by Council Member Williams, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

2.1 Approval of minutes:

- (a) Regular Minutes of December 13, 2005**
[Deferred from 9/19/06 – Item 2.1(b) et al and 10/3/06 – Item 2.1(a)]

Documents Filed: The regular minutes dated December 13, 2005.

Action: The minutes were approved.

- 2.2 (a) **ORD. NO. 27882 – Rezoning certain real property situated on the southwest corner of McKee Road and Delia Street to R-1-8 Single Family Residence District. C06-073**

Documents Filed: Proof of Publication of the title of Ordinance No. 27882 executed on October 10, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27882](#) was adopted. (10-0-1. Disqualified: Cortese.)

- (b) **ORD. NO. 27883 – Rezoning certain real property situated on the north side of Capitol Expressway approximately 200 feet west of Snell Avenue to A(PD) Planned Development Zoning District. PDC06-019**

Documents Filed: Proof of Publication of the title of Ordinance No. 27882 executed on October 10, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27883](#) was adopted. (11-0.)

- (c) **ORD. NO. 27884 – Rezoning certain real property situated on the southwest corner of Monterey Road and Goble Lane to A(PD) Planned Development Zoning District. PDC06-034**

Documents Filed: Proof of Publication of the title of Ordinance No. 27882 executed on October 10, 2006, submitted by the City Clerk.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Council Member Campos, seconded by Council Member Yeager and carried unanimously, Ordinance No. 27884 was adopted. (9-0-2. Absent: Chavez, LeZotte.)

- (d) **ORD. NO. 27885 – Rezoning certain real property situated on the southwesterly corner of Eberly Drive and Neilson Court to A(PD) Planned Development Zoning District. PDC04-091**

Action: Deferred to October 24, 2006.

- (e) **ORD. NO. 27886 – Rezoning certain real property situated at the southwest corner of Tully Road and Capitol Expressway to CG Commercial General Zoning District. C05-125**

Documents Filed: Proof of Publication of the title of Ordinance No. 27882 executed on October 10, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27886](#) was adopted. (11-0.)

- 2.3 Adoption of a resolution authorizing the City Manager to negotiate and execute a first amendment to the consultant agreement for management and design services with Beals Alliance, Inc., for the Lake Cunningham Regional Skate Park Master Plan Amendment Project extending the term from March 31, 2008 to June 30, 2008, and increasing the compensation by \$167,991, from \$500,000 for a total agreement amount not to exceed \$667,991. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)
(Deferred from 9/26/06 – Item 2.11)**

Documents Filed: (1) Memorandum from Council Member Cortese, dated October 16, 2006, recommending approval of the staff direction with direction as indicated in “Action”. (2) Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Albert Balagso and Director of Public Works Katy Allen, dated September 6, 2006, recommending adoption of the resolution.

Action: Upon motion by Council Member Cortese, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 73445](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a First Amendment to the Consultant Agreement for Management and Design Services with Beals Alliance, Inc. for the Lake Cunningham Regional Skate Park Master Plan Amendment Project Extending the Term from March 31, 2008 to June 30, 2008 and Increasing the Compensation by \$167,991 from \$500,000 for a Total Amount Not To Exceed \$667,991”, was adopted, with Staff directed to: (1) Conduct additional community outreach in Spring 2007 to confirm overall priorities for Lake Cunningham Regional Park and develop a 2007-08 budget proposal to update the Lake Cunningham Master Plan as appropriate based on the results of this community outreach. (2) Work with each Council Office in conducting additional community outreach related to those projects called out in the Measure P Projects. (11-0.)

- 2.4 Adoption of a resolution authorizing the Director of Finance to execute a continuation agreement between the City and ACS for parking control equipment at San José International Airport, extending the term from October 1, 2000 to December 31, 2006 to allow for payment of \$654,477.05 to be made to the vendor. CEQA: Not a Project. (Finance/Airport)
(Deferred from 10/3/06 – Item 2.6)**

Documents Filed: Memorandum from Director of Finance Scott Johnson and Director of Aviation William Sherry, dated October 4, 2006, recommending adoption of a resolution.

Action: [Resolution No. 73446](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a continuation Agreement with ACS Transport Solutions, Incorporated for Parking Control Equipment at San José International Airport”, was adopted. (11-0.)

- 2.5 Adoption of a resolution authorizing the City Manager to negotiate and execute a fifth amendment to the agreement with Airport & Aviation Professionals, Inc. dba AvAirPros for consulting services related to technical and operational issues during implementation of the Airport Master Plan, increasing compensation by \$163,000 from \$730,000, for a total agreement amount not to exceed \$893,000, and extending the term of the agreement from December 15, 2006 to June 30, 2007. CEQA: Resolution Nos. 67380 and 71451, PP06-159. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated September 27, 2006, recommending adoption of a resolution.

Action: [Resolution No. 73447](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Fifth Amendment to the Agreement with Airport & Aviation Professionals, Inc. DBA Avairpros for Consulting Services for the Norman Y. Mineta San José International Airport in a Total Amount Not To Exceed \$893,000 and Extending the Term to June 30, 2007”, was adopted. (11-0.)

- 2.6 Approval of a continuation agreement with Public Management Advisors, LLC and Exstare Federal Services Group, LLC for consultant services for the Airport Concession Disadvantaged Business Enterprise Program at the Norman Y. Mineta San José International Airport, extending and continuing the term from August 31, 2006 to January 31, 2007 and increasing the maximum compensation by \$52,802 from \$97,875 to \$150,677. CEQA: Resolution Nos. 67380 and 71451, PP06-156. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated October 11, 2006, recommending approval of a continuation agreement.

Action: The second amendment and the continuation agreement were approved. (11-0.)

- 2.7 Adoption of a resolution authorizing the City Attorney to negotiate and execute a third amendment to the agreement with Nossaman Guthner Knox & Elliott LLP for legal services related to negotiation of the Design Build Agreement for the Airport Terminal Area Improvement Program, increasing compensation by \$100,000 for a total not to exceed \$350,000 and extending the term from December 31, 2006 to June 30, 2007. CEQA: Not a Project. (City Attorney’s Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated October 5, 2006, recommending adoption of a resolution.

Action: [Resolution No. 73448](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Third Amendment to the Legal Services Agreement with Nossaman Guthner Knox & Elliot LLP, Increasing the Compensation by \$100,000 for a Total Amount Not To Exceed \$350,000 and Extending the Term from December 31, 2006 to June 30, 2007”, was adopted. (11-0.)

2.8 Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund):

- (a) Increase the estimate for Earned Revenue by \$75,000.**
- (b) Establish an appropriation to the Department of Housing for the SNI Multi-Family Home Improvement Program Project (PSM #470) in the amount of \$75,000.**

CEQA: Not a Project. (City Manager's Office)

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated September 27, 2006, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 27887](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Strong Neighborhoods Initiative Multi-Family Home Improvement Program Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 73449](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73265 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2006-2007 to Adjust Revenues in the Services for Redevelopment Capital Fund", were adopted. (11-0.)

- 2.9**
- (a) Approval of award of open purchase orders for supplies, materials, equipment and services for FY 2006-2007 #8 and authorization for the Director of Finance to execute the purchase orders.**
 - (b) Approval of award of open purchase orders for supplies, materials, equipment and services for FY 2006-2007 #9 and authorization for the Director of Finance to execute the purchase orders.**

CEQA: See Administration's Memorandum to Council for specific CEQA clearance determinations on each recommended action. Finance)

Documents Filed: (1) Memoranda from Director of Finance Scott Johnson dated September 27, 2006 and September 22, 2006, recommending approval of Purchase Orders 8 and 9. (2) Memorandum from Director of Environmental Services John Stufflebean, dated October 13, 2006, providing additional information regarding the TPAC meeting. (3) Letter from the Treatment Plant Advisory Committee, dated October 12, 2006, stating concurrence with the Staff recommendation.

Director of Finance Scott Johnson clarified that the Purchase Orders were actually four purchase orders and requested deferral of one of them in order to enter into a service agreement.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Pyle and carried unanimously, open purchase orders 8 and 9 were approved, with the service agreement for Pro-Sweep, Inc. deferred. (11-0.)

- 2.10 Report on bids and award the purchase of four Variable Frequency Drives (VFDs) to Buckles Smith Electric, the lowest responsive bidder, in an amount not to exceed \$706,493.62 and authorizing the Director of Finance to execute the purchase order. CEQA: Not a Project. (Finance)**

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated September 27, 2006, recommending approval of the purchase. (2) Memorandum from Director of Environmental Services John Stufflebean, dated October 13, 2006, providing additional information regarding the TPAC meeting. (3) Letter from the Treatment Plant Advisory Committee, dated October 12, 2006, stating concurrence with the Staff recommendation.

Action: The purchase was approved. (11-0.)

- 2.11 Report on bids and award the purchase of 64 plug valves to T&T Valve Instrument, the sole bidder, for a total amount not to exceed \$112,322 including tax and freight and authorizing the Director of Finance to execute the purchase order. CEQA: Not a Project. (Finance)**

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated September 27, 2006, recommending approval of the purchase. (2) Memorandum from Director of Environmental Services John Stufflebean, dated October 13, 2006, providing additional information regarding the TPAC meeting. (3) Letter from the Treatment Plant Advisory Committee, dated October 12, 2006, stating concurrence with the Staff recommendation.

Public Comment: George Fokos spoke in favor of the Staff recommendation.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Yeager and carried unanimously, the purchase was approved. (10-0-1. Absent: Reed.)

- 2.12 Report on bids and award the purchase of 55 Dell Power Edge 2950 servers, related peripherals, and extended maintenance to the low bidder, Technology Integration Group for a total amount not to exceed \$278,202.96 including sales tax and delivery, and authorizing the Director of Finance to:**

- (a) Execute the purchase order;
- (b) Amend the initial purchase order to purchase additional quantities of Dell Power Edge 2950 servers for the remainder of the fiscal year subject to annual appropriations; and
- (c) Execute purchase orders to acquire additional quantities for two additional fiscal years subject to annual appropriations.

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated September 27, 2006, recommending approval of the purchase.

Action: The award of the purchase was approved. (11-0.)

- 2.13 (a) Report on quotes and authorize the Director of Finance to execute open purchase orders for the purchase of asphalt concrete with Raisch Company, Granite Rock and Reed & Graham for a total amount not to exceed \$864,583 collectively for the period beginning October 17, 2006 through March 31, 2007.**
- (b) Adoption of a resolution authorizing the Director of Finance to exercise options for two additional one year periods subject to annual appropriations.**
- CEQA: Exempt, PP04-02-041. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated September 27, 2006, recommending adoption of the resolution.

Public Comment: George Fokos spoke in favor of the Staff recommendation.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Yeager and carried unanimously, [Resolution No. 73450](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Exercise Options to Purchase Additional Quantities of Asphalt Concrete for Two Additional One Year Periods", was adopted. (10-0-1. Absent: Reed.)

- 2.14 Approval of award of open purchase orders for Electrical Maintenance and Repair Services, and authorize the Director of Finance to execute the open purchase orders with Cupertino Electric, Inc., Rosendin Electric, Inc., Ray Scheidts Electric, Inc. and Lopes Electric, Inc. for \$200,000 each and a total amount not to exceed \$800,000 collectively for the period beginning October 18, 2006 through October 17, 2007. CEQA: Exempt, PP06-031. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated October 4, 2006, recommending award of open purchase orders.

Action: The award of open purchase orders was approved. (11-0.)

- 2.15 Approval of award of open purchase orders for Building Maintenance and Repair Services, and authorize the Director of Finance to execute the open purchase orders with George Bianchi Construction, Inc., DBA Bianchi-Amaker Construction, Golden State Builders, and Tucker Construction, Inc. for \$200,000 each and a total amount not to exceed \$600,000 collectively for the period beginning October 18, 2006 through October 17, 2007. CEQA: Exempt, 04-03-081. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated October 4, 2006, recommending approval of award of open service orders.

Action: The award of the open services orders was approved. (11-0.)

2.16 Rejection of all proposals for custodial services at the Water Pollution Control Plant and authorize the Director of Finance to re-solicit the requirement. CEQA: Not a Project. (Finance)

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated September 22, 2006, recommending rejection of all proposals and authorization to re-solicit. (2) Memorandum from Director of Environmental Services John Stuffbean, dated October 13, 2006, providing additional information regarding the TPAC meeting. (3) Letter from the Treatment Plant Advisory Committee, dated October 12, 2006, stating concurrence with the Staff recommendation.

Action: Authorization was approved. (11-0.)

2.17 Adoption of a resolution approving a \$235,000 increase in the City's loan, for a total loan principal amount of \$2,346,730, to the Chai House II Affordable Senior Housing Project, located at 814 St. Elizabeth Drive. Council District 6. CEQA: Not a Project. (Housing)

Action: Dropped.

2.18 Adoption of a resolution approving a housing rehabilitation loan of up to \$147,500 to Julio Rodriguez for repairs to his home located at 1564 Whitton Avenue. CEQA: Exempt, File No. PP06-153. Council District 5. SNI: Gateway East. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated September 27, 2006, recommending adoption of a resolution.

Action: [Resolution No. 73451](#), entitled: "A Resolution of the Council of the City of San José Approving a Housing Rehabilitation Loan of up to \$147,500.00 to Julio Rodriguez for Repairs to his Home Located at 1564 Whitton Avenue in San José", was adopted. (11-0.)

2.19 Approval of travel for Council Member Nguyen to Seoul, Korea for Asia 21 Young Leaders Summit on November 17-19, 2006. Source of Funds: Asia Society. (Nguyen) (Rules Committee referral 10/4/06)

Documents Filed: Memorandum from Council Member Nguyen, dated October 16, 2006, requesting approval of travel.

Action: The travel request was approved. (11-0.)

- 2.20 Adoption of a resolution ordering the reorganization of territory designated as Evergreen No. 191 which involves the annexation to the City of San José of an approximately 2.40 gross acres of land located on the east side of Ruby Avenue, approximately 400 feet southerly of Holderman Drive and adjacent to the City of San José annexations Evergreen Nos. 166, 169, 170 and 132 and the detachment of the same from Central Fire Protection and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 8. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Acting Director of Planning, Building and Code Enforcement Joe Horwedel, dated September 27, 2006, recommending adoption of a resolution.

Action: [Resolution No. 73452](#), entitled: “A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Evergreen No. 191 Subject to Liability for General Indebtedness of the City”, was adopted. (11-0.)

- 2.21 Approval to appoint Bob Carlson of the St. James Neighborhood Historic District to the Civic Plaza Parking and Traffic Committee filling an at-large vacancy on the committee. CEQA: Not a Project. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated September 27, 2006, recommending appointment of Bob Carlson.

Action: The appointment was approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.2 Report of the Rules Committee – October 4, 2006
Vice Mayor Chavez, Chair**

Documents Filed: The Rules Committee Report dated October 4, 2006.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review October 17, 2006 Draft City Council Agenda

The Committee approved the October 17, 2006 Draft City Council Agenda with seven additions.

- (2) Add New Items to October 10, 2006 City Council Agenda

There were none. Meeting was canceled.

3.2 Report of the Rules Committee – October 4, 2006 (Cont'd.)
Vice Mayor Chavez, Chair

- (b) City Council (Cont'd.)
 - (3) List of Reports Outstanding - There were none.

- (c) Legislative Update
 - (1) State

Intergovernmental Director Betsy Shotwell presented a brief update and noted that she would be working with Lobbyist Roxanne Miller preparing a synopsis of bills that were of major interest to the City, whether in support or in opposition.

- (2) Federal - No Report.

- (d) Meeting Schedules. Attachment: Memoranda from Acting Director of Planning, Building and Code Enforcement Joe Horwedel, both dated September 29, 2006, recommending the study sessions.
 - (1) Approval of Evergreen East Hills Vision Strategy Study Session for Friday, October 20, 2006 from 9:00 a.m. to 12:00 noon in the City Council Chambers.
 - (2) Approval of the General Plan Study Session Friday morning on October 27, 2006

The Committee approved the meeting schedules.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated September 28, 2006, transmitting items for the Public Record for the period of September 20-26, 2006.

The Committee noted and filed the Public Record.

- (f) Appointments to Boards, Commissions and Committees
 - (1) Approval of Arts Commission appointment. Attachment: Memorandum from Council Member Williams, dated September 27, 2006, recommending one appointment.

The Committee approved the appointment of Awashthi Aarti to the Arts Commission.

3.2 Report of the Rules Committee – October 4, 2006 (Cont'd.)
Vice Mayor Chavez, Chair

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) Urgency ordinance prohibiting the use automobile/bus/truck horns in residential neighborhoods for any reason other than emergency warning of traffic hazard. Attachment: Memorandum from Council Member LeZotte, dated October 2, 2006, requesting to agendize an urgency ordinance.

The Committee requested the City Attorney to return to the Rules Committee on October 11, 2006, and report back on the urgency ordinance.

- (h) Review of Significant Public Records Act Requests - There were none.
- (i) Review of Council Policy Updates per Sunshine Reforms - There were none.
- (j) Open Forum - There were none.
- (k) Adjournment - The meeting was adjourned at 2:32 p.m.

Public Comment: William Garbett spoke in opposition to Item 3.2(g), the urgency ordinance.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Rules Committee Report and the actions of October 4, 2006, were accepted. (10-0-1. Absent: Reed.)

- 3.4 (a) (1) Acceptance of the 2005-2006 City Manager's Annual Report of the Finances of the City of San José, in compliance with City Charter Section 701(f).**
- (2) Adoption of Appropriation Ordinance and Funding Sources Resolution amendments in various operating and capital funds to implement 2005-2006 Annual Report recommendations, including appropriate technical adjustments.**

Documents Filed: (1) Memorandum from City Manager Les White, dated September 27, 2006, recommending acceptance of the report. (2) The Annual Report dated 2005-2006. (3) Staff presentation of the 2005-2006 Annual Report.

City Manager Les White provided the introductory remarks and referenced key recommendations in the Annual Report. City Manager White also summarized key components of the City's Administrative Projects Systems (CAPS) Report.

Budget Director Larry Lisenbee presented the 2005-2006 Annual Report. Numerous Council questions followed.

3.4 (Cont'd.)

Public Comment: Speaking in support of the Staff recommendation relative to the Arts Stabilization were Steve McCray, Chair of the Arts Commission, and Randall King, Artistic Director of the San José Stage Company.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Reed and carried the Annual Report was accepted, with two exceptions, the City Manager's recommendations regarding City Hall Retail Tenant Improvements, which was deferred until November 14, 2006 and the \$2 million dollar line of credit for the San José Repertory Theatre, which was deferred to the discussion of 9.1 on this Agenda; [Ordinance No. 27888](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Monies in the Various Funds to Implement 2005-2006 Annual Report Recommendations and Make Appropriate Technical Adjustments; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 73453](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73265 To Implement the 2005-2006 Annual Report Recommendations and Make Appropriate Technical Adjustments in Various Operating Funds", were adopted. (10-1. Noes: Gonzales.)

- 3.4 (a) (3) **Approval of position actions in the Airport, Fire, Housing, Planning Building and Code Enforcement, and Parks, Recreation and Neighborhood Services Departments, and the Offices of the City Auditor, City Clerk and City Manager for a net addition of 10.5 positions.**
- (4) **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with American Musical Theatre for the purchase of the sound system at the Center for the Performing Arts in an amount not to exceed \$470,000.**
- (b) **Acceptance of the first report of the City's Administration Projects System (CAPS).**
- CEQA: Not a Project. (City Manager's Office)**

Action: Upon motion by Council Member LeZotte, seconded by Council Member Reed and carried unanimously, the position actions were approved and [Resolution No. 73454](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with American Musical Theatre for the Purchase of the Sound System at the Center for Performing Arts", was adopted, and the first report of the City's Administration Projects System (CAPS) was accepted, as amended, with suggestions for format and content improvements. (11-0.)

- 3.5 (a) **Interview two applicants.**
- (b) **Appoint one applicant to serve a four year term on the Civil Service Commission, term ending December 1, 2010.**
- (City Clerk)**
- (Rules Committee referral 10/4/06)**

3.5 (Cont'd.)

Documents Filed: Memorandum from City Clerk Lee Price, dated October 16, 2006, recommending as stated above.

The City Council interviewed David Busse and David Parker.

Action: David Busse was re-appointed to serve a four year term on the Civil Service Commission.

- 3.6 (a) **Approval of the second amendment to the agreement for consulting services between the City of San José and Langham Consulting Services, Inc. extending the term of the agreement from September 30, 2006 to November 30, 2006 and increasing total compensation by \$46,000 to a not-to-exceed amount of \$189,000 in order to provide additional services related to developing a strategy for improving Call Center performance.**
- (b) **Adopt a resolution authorizing the Director of Finance to negotiate and execute an amendment to the Operations and Maintenance Services Agreement with Nortel Networks Corporation (Nortel) for enhancements to the City's phone system for the Customer Contact Center to provide efficiencies and improved customer services and to increase the maximum compensation by an additional \$79,148 and to execute change orders in an additional contingency amount not to exceed \$15,000.**

CEQA: Not a Project. (Finance/Information Technology)

Documents Filed: Memorandum from Director of Finance Scott Johnson and Director of Information Technology Randall Murphy, dated September 27, 2006, recommending approval of the second amendment to the agreement and adoption of a resolution.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Yeager and carried unanimously, the second amendment to the agreement was approved with Staff requested to report back next month on Call Center improvements, including how customer service representatives are working with the system, and [Resolution No. 73455](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Negotiate and Execute an Amendment to the Operations and Maintenance Service Agreement with Nortel Networks Corporation for Enhancements to the City's Telephone System for the Customer Contact Center", was adopted. (9-0-2. Absent: Cortese, Reed.)

- 3.7 (a) **Adoption of a resolution approving a revised Council Policy 2-1 for the Exhibition of Federal, State, City and Ceremonial Flags from City Buildings.**
- (b) **Adoption of a resolution directing the City Manager to permanently display the POW/MIA flag beneath the United States flag on the exterior flagpoles at the old City Hall.**

(Item continued on the next page)

- 3.7 (c) **Adoption of a resolution authorizing the City Manager to temporarily display the following ceremonial flags at City Hall under certain circumstances:**
- (1) **The flag of Ireland during Irish Week.**
 - (2) **The flag of Mexico on Cinco de Mayo (May 5).**
 - (3) **The flag of Mexico on Mexican Independence Day (September 16).**
 - (4) **The flag of the former Republic of Vietnam (South Vietnam) upon request of the Mayor or a Council Member in connection with an event or ceremony.**
 - (5) **The Rainbow flag, in recognition of the Lesbian, Gay, Bisexual, and Transgender (LGBT) community, upon request of the Mayor or a Council Member in connection with an event or ceremony.**

CEQA: Not a Project. (General Services)

Documents Filed: (1) Memorandum from Council Member Cortese, dated October 16, 2006, recommending approval of the staff recommendation with additions. (2) Memorandum from Director of General Services Peter Jensen, dated September 27, 2006, recommending adoption of resolutions.

Public Comment: Speaking in support were George Fokos, Ross Signorino and Mark Trout.

Action: Upon motion by Council Member Cortese, seconded by Council Member Campos and carried unanimously, [Resolution No. 73456](#), entitled: "A Resolution of the Council of the City of San José Approving an Amendment to the City Council Policy No. 2-1 Regarding the Exhibition of Federal, State, City and Ceremonial Flags from City Buildings"; [Resolution No. 73457](#), entitled: "A Resolution of the Council of the City of San José Approving a Permanent Display of the POW/MIA Flag at the Old City Hall" and [Resolution No. 73458](#), entitled: "A Resolution of the Council of the City of San José Approving the Temporary Display of Ceremonial Flags at City Hall Under Certain Circumstances", were adopted, with Staff directed to: (1) Cross-reference and return with the Facilities Use Report (scheduled for Council 11/14/06) a process for requesting that a flag be flown at City Hall; (2) Distribute an informational memorandum describing past requests; and (3) Consistent with prior Council action, use "Heritage Flag of Freedom" as the name of the former Republic of Vietnam. (11-0.)

- 3.8 **Adoption of a resolution authorizing the City Manager to negotiate and execute group health agreements with Kaiser Permanente, Blue Shield of California, and United HealthCare (PacifiCare/Secure Horizons) for the period from January 1, 2007 through December 31, 2011. CEQA: Not a Project. (Human Resources)**

Documents Filed: Memorandum from Director Human Resources Mark Danaj, dated September 29, 2006, recommending adoption of a resolution.

Public Comment: Deborah Powell spoke in favor of the staff recommendation.

3.8 (Cont'd.)

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, [Resolution No. 73459](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Group Health Agreements with Kaiser Permanente, Blue Shield of California and United Healthcare (PacifiCare/Secure Horizons) for the Period from January 1, 2007 through December 31, 2011”, was adopted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Building Strong Neighborhoods Committee – October 2, 2006 Council Member Chirco, Chair

Documents Filed: The Building Strong Neighborhoods Committee Report dated October 2, 2006.

- (a) Welcome and Introductions
- (b) Agenda Overview
- (c) Strong Neighborhoods Project Advisory Committee Presentation and Discussion
- (d) Discussion of Building Strong Neighborhoods Beyond Redevelopment Areas
- (e) Discussion of the Future of the Strong Neighborhoods Project Advisory Committee
- (f) Review of Key Discussion Points

Discussion only. No Committee action required.

- (g) Oral Petitions

Charles Lauer, Winchester NAC, spoke on the need to keep people involved with the non Redevelopment Agency areas.

- (h) Adjournment - The meeting was adjourned at 7:15 p.m.

Action: Upon motion by Council Member Chirco, seconded by Vice Mayor Chavez and carried unanimously, the Building Strong Neighborhoods Committee Report and the actions of October 2, 2006, were accepted. (11-0.)

4.2 Report of the Driving a Strong Economy Committee – September 25, 2006 Council Member Williams, Chair

Documents Filed: The Driving a Strong Economy Committee Report dated September 25, 2006.

**4.2 Report of the Driving a Strong Economy Committee – September 25, 2006 (Cont'd.)
Council Member Williams, Chair**

- (a) Small Contractor Focus Group. Attachment: Memorandum from Director of Public Works Katy Allen, dated September 8, 2006, recommending acceptance of the report.

The Committee accepted the Staff report.

- (b) Grand Prix Report
Deferred.

- (c) Economic Development Strategy Progress Report
Deferred.

- (d) Update on the Small Business Ambassador Program. Attachment: Memorandum from Acting Director of Planning, Building and Code Enforcement Joe Horwedel, dated September 8, 2006, recommending acceptance of the report.
(Deferred from 6/26/06)

The Committee accepted the Staff report.

- (e) San José Entrepreneur Center Program Evaluation Report. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated September 13, 2006, recommending acceptance of the report.
(Rules Committee referral 9/2/06)

The Committee accepted the Staff report.

- (f) Oral Petitions - None were presented.

- (g) Adjournment - The meeting was adjourned at 3:08 p.m.

Action: Upon motion by Council Member Williams, seconded by Vice Mayor Chavez and carried unanimously, the Driving a Strong Economy Committee Report and the actions of September 25, 2006, were accepted. (11-0.)

4.3 Public hearing and consideration of approval of a Historical Property Contract (California Mills Act) between the City of San José and property owners of the Curtis House, City Landmark No. HL05-152, on a 0.20 gross acre site, in the R-1-8 Single-Family Residence Zoning District, located on the southeast corner of East San Antonio Street and South Seventeenth Street (254 South 17th Street) (Gloria M. Scaria). Director of Planning, Building and Code Enforcement and Historic Landmarks Commission recommends approval (4-0-0). CEQA: Exempt. SNI: University.

MA06-002 - District 3

(Continued from 10/3/05 – item 4.12)

4.3 (Cont'd.)

Documents Filed: (1) Memorandum from Historic Landmarks Commission Secretary Joe Horwedel, dated September 21, 2006, recommending adoption of a resolution. (2) Proofs of Publications of Notices of Public Hearings, executed on August 25, 2006 and September 8, 2006, submitted by the City Clerk.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Campos and carried unanimously, [Resolution No. 73460](#), entitled: "A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Gloria M. Sciara for the Curtis House (City Landmark No. HL05-152)", was adopted. (11-0.)

4.4 Adoption of a resolution:

- (a) **Authorizing the Director of Housing to enter into exclusive negotiations with Satellite Housing, Inc., or its affiliate, for the development of a 5.94-acre City-owned site located at 2090 Evans Lane; and,**
- (b) **Authorizing the Director of Housing to negotiate and execute an Option Agreement for the purchase of property from the City of San José with Satellite Housing, Inc., or its affiliate, for the subject property in the amount of \$15,507,400.**

CEQA: Mitigated Negative Declaration, File No. GP02-06-02b. Council District 6. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated September 27, 2006, recommending adoption of a resolution.

Action: Upon motion by Council Member Yeager, seconded by Vice Mayor Chavez and carried unanimously, [Resolution No. 73461](#), entitled: "A Resolution of the Council of the City of San José (a) Authorizing the Director of Housing to Enter into Exclusive Negotiations with Satellite Housing, Inc. or Its Affiliate, for the Development of a 5.94 Acre City Owned Site Located at 2090 Evans Lane; and (b) Authorizing the Director of Housing to Negotiate and Execute an Option Agreement for the Purchase of Property from the City of San José with Satellite Housing, Inc. or Its Affiliate, for the Subject Property in the Amount of \$15,507,400," was adopted. (11-0.)

4.5 Approval of an ordinance repealing Part 22 of Chapter 2.08 of Title 2 of the San José Municipal Code and amending in its entirety Part 28 of Chapter 2.08 of Title 2 to consolidate the Community Development Block Grant (CDBG) Steering Committee and the Housing Advisory Commission (HAC), with the new commission named the Housing and Community Development Advisory Commission (HCD). **CEQA: Not a Project. (Housing)**

Documents Filed: (1) Memorandum from Council Member Cortese, dated October 17, 2006, recommending approval of the staff recommendation with further direction as outlined in "Action". (2) Memorandum from Director of Housing Leslye Krutko, dated September 28, 2006, recommending approval of an ordinance. (3) Supplemental memorandum from Director of Housing Krutko, dated October 13, 2006, providing the outcome of the Housing Advisor Commission meeting on October 12, 2006.

4.5 (Cont'd.)

Assistant Director of Housing, Mike Mower, responded to Council questions regarding the committee makeup. Council Member Campos recommended that three members be of low income.

Public Comment: Saul Wachter, Affordable Housing Network, expressed opposition, adding that it is not in the best interest of the people of San José.

Action: Upon motion by Council Member Cortese, seconded by Vice Mayor Chavez and carried unanimously, [Ordinance No. 27889](#), entitled: “An Ordinance of the City of San José Repealing Part 22 of Chapter 2.08 of Title 2 of the San José Municipal Code and Amending in Its Entirety Part 28 of Chapter 2.08 of Title 2 to Consolidate the Community Development Block Grant Steering Committee and the Housing Advisory Commission into the New Commission Named the Housing and Community Development Advisory Commission”, was passed for publication, as amended, the composition of the new commission shall: (1) Include a minimum of one but not more than two members each from Council Districts 3, 5 and 7; (2) The balance of the nine-member commission shall be At-Large appointments; (3) Three members of the commission shall be of low-income; (4) Review the outcome of the merger in one year and return to Council with an update. (11-0.)

NEIGHBORHOOD SERVICES

- 5.2 Approval of a second amendment to the agreement between the City and the Trustees of the California State University System on behalf of San José State University (SJSU) for the Operation and Maintenance of the Dr. Martin Luther King, Jr. Library (King Library) in order to update the allocation method for disbursing funds for payment of maintenance and utilities expenses. CEQA: Not a Project. Council District 3. (Library)**

Documents Filed: Memorandum from Library Director Jane Light, dated September 27, 2006, recommending approval of the second amendment.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Campos and carried unanimously, the second amendment to the agreement was approved. (11-0.)

- 5.3 Adoption of a resolution authorizing the City Manager to complete a community sports fields master plan in an amount not to exceed \$165,000 and request that the City Manager submit to the City Council a work plan for the hiring of an outside consultant for the project by the end of the calendar year. (Pyle)
(Rules Committee referral 10/11/06)**

Documents Filed: Memorandum from Council Member Pyle, dated October 10, 2006, recommending adoption of a resolution.

5.3 (Cont'd.)

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Council Member Pyle, seconded by Council Member Cortese and carried unanimously, [Resolution No. 73462](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Undertake the Planning and Completion of a Community Sports Field Master Plan in an Amount Not To Exceed \$165,000", was adopted. (11-0.)

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Building Better Transportation Committee – October 2, 2006 Council Member Campos, Chair

Documents Filed: The Building Better Transportation Committee Report dated October 2, 2006.

- (a) Report on PG&E Utility Undergrounding Project Delivery. Attachment: Memorandum from Director of Public Works Katy Allen, dated September 18, 2006, recommending acceptance of the report.

The Committee accepted the Staff report with Staff directed to work with the City's Lobbyist, Public Utilities Commission and PG&E on the tariff issue.

- (b) Report on Railroad Quiet Zones. Attachment: Memorandum from Director of Transportation James Helmer, dated September 20, 2006, recommending acceptance of the report.

The Committee accepted recommendations (a) and (b) and requested that Staff include the Hensley Historic District on their list for consideration for a case study.

- (c) Update on Traffic Calming and School Safety Programs. Attachment: Memorandum from Director of Transportation James Helmer and Police Chief Robert Davis, dated September 19, 2006, recommending acceptance of the report.

The Committee accepted the Staff report.

- (d) Oral Petitions - There were none.
- (e) Adjournment - The meeting was adjourned at 3:00 p.m.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, the Building Better Transportation Committee Report and the actions of October 2, 2006, were accepted. (10-0-1. Absent: Cortese.)

- 6.2 Report on bids and award of contract for the Norman Y. Mineta San José International Airport North Concourse General Building (Package 4) to the low bidder, Clark Construction Group-California, LP, to include the base bid and Alternate No. 8, in the amount of \$144,082,025, and approval of a contingency in the amount of \$10,085,742. CEQA: Resolutions No. 67380 and 71451, PP 06-131. (Public Works/Airport)
(Deferred from 9/19/06 – Item 6.2)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated August 30, 2006, recommending approval of the contract. (2) Supplemental memorandum from Director of Public Works Katy Allen and Director of Aviation William Sherry, dated October 3, 2006, providing additional information and bid results.

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams and carried unanimously, the contract was approved. (10-0-1. Absent: Cortese.)

- 6.3 (a) Approval of a contract with Hensel Phelps Construction for the design and construction of the Airport Terminal Area Improvement Program in the amount of \$488,211,000, including a City-controlled design and construction contingency in the amount of \$24,560,000, for a total contract amount not to exceed \$512,771,000.**
- (b) Approval of a City-controlled program reserve for additions to the scope of the Program, in an amount not to exceed \$55,965,000.**
- (c) Adoption of a resolution finding that the contract with Hensel Phelps for the design and construction of the Airport Terminal Area Improvement Program will result in faster project completion than if the City used a traditional design-bid-build procurement process.**
- (d) Adoption of a resolution:**
- (1) Authorizing the City Manager to negotiate and execute contract change orders for the City-controlled design and construction contingency pursuant to the terms of the contract with Hensel Phelps in an amount not to exceed \$24,560,000.**
 - (2) Authorizing the City Manager to negotiate and execute contract change orders for the City-controlled program reserve in an amount not to exceed \$55,965,000.**
 - (3) Authorizing the City Manager to negotiate and execute a first amendment to the agreement with Lamberson Koster & Company, a wholly owned subsidiary of Arthur J. Gallagher & Company, dba Gallagher Construction Services, to provide insurance broker services for an Owner Controlled Insurance Program for the Airport Master Plan Projects, to include the administration of the Owner Controlled Insurance Program for the Airport Terminal Area Improvement Program, to extend the term of the agreement from October 27, 2006 to October 26, 2011, and to increase the compensation by \$1,500,000, from \$1,575,000 to a not-to-exceed amount of \$3,075,000.**

(Item continued on the next page)

- 6.3 (d) (4) **Authorizing the City Manager to negotiate and execute the extension of the City's current OCIP program with American International Group from March 31, 2007 to March 31, 2012 including the purchase of Builders Risk and Owners Protective Professional Indemnity with an increase in premium and loss reserves in a total amount not to exceed \$19,500,000.**
- (e) **Adoption of the following Appropriation Ordinance Amendments in the Airport Revenue Bond Improvement Fund:**
- (1) **Establish the Terminal Area Improvement, Phase II appropriation in the amount of \$26,799,000.**
- (2) **Increase the Public Parking Garage appropriation in the amount of \$8,187,000.**
- (3) **Decrease the Ending Fund Balance by \$34,986,000.**
- (f) **Approval of a sublease agreement between the City and Hensel Phelps for up to 15,288 square feet of space in the Airport administrative offices at 1732 No. First Street commencing October 18, 2006, for a year-to-year term that shall not extend beyond December 31, 2009, with initial monthly rent of \$35,114, with rates increasing \$.05 per square foot every July 1. Hensel Phelps will be responsible for a pro rata share of operating expenses, including taxes, insurance, utilities and parking.**

Action: 6.3(f) was dropped.

- (g) **Direction to the staff to implement comprehensive reporting to Council on a regular basis as described in the report.**

CEQA: Resolution Nos. 67380 and 71451, PP 06-137. (Public Works/Airport/City Manager's Office)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, Director of Aviation William Sherry and Budget Director Larry Lisenbee, dated September 27, 2006, recommending approval of the contract, adoption of resolutions and appropriation ordinance amendments and approval of sublease agreement. (2) Supplemental memorandum from Director of Public Works Katy Allen and Director of Aviation William Sherry, dated October 12, 2006, providing the named subcontractor list, emerging budget information, additional contract terms and conditions, the result of the Airport Commission meeting and to delete Item (f) above. (3) Letter from the public dated October 17, 2006, regarding the approval of the Finding/Airport Traffic and Improvement Conditions.

Director of Aviation William Sherry outlined the Design and Construction of the Airport Terminal Area Improvement Program. Council questions and comments followed.

Public Comment: David Pandori, William Garbett and George Fokos spoke in reference to the issue. spoke in opposition to the Staff recommendations.

6.3 (Cont'd.)

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Yeager and carried unanimously, the contract with Hensel Phelps was approved, [Resolution No. 73463](#), entitled: “A Resolution of the Council of the City of San José Finding that the Contract with Hensel Phelps Construction for the Design and Construction of the Airport Terminal Area Improvement Program will Result in Faster Project Completion than if the City Used a Traditional Design Bid Build Project Delivery System”; [Resolution No. 73464](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Contract Change Orders and Amendments to City Agreements Pursuant to the Terms of the Contract with Hensel Phelps Construction for the Design and Construction of the Airport Terminal Area Improvement Program” and [Ordinance No. 27890](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Monies in the in the Airport Revenue Bond Improvement Fund for the Terminal Area Improvement, Phase II Project and the Public Parking Garage; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted, and the sublease with Hensel Phelps was approved, with Staff directed to include, as part of the first report back, a discussion about the funding for the light-rail connection to the Airport and for transit on the Airport; and concurrently to send a letter to the Valley Transportation Authority (VTA) asking them to also take up these issues. (10-0-1. Absent: Cortese.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 **Approval of San José Municipal Water System’s Water Supply Assessment for Coyote Valley Specific Plan. CEQA: Exempt, File No. PP06-158. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated September 27, 2006, recommending approval and transmitting the water assessment for Coyote Valley.

Public Comment: Cathy Brandhorst spoke off topic.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the report was approved. (9-0-2. Absent: Cortese, Yeager.)

7.2 **Adoption of a resolution appointing the Bay Area Water Supply and Conservation Agency as the authorized representative of the City in discussions/ negotiations with San Francisco for an agreement to provide a permanent, non-interruptible and reliable high quality water supply at a fair price. CEQA: Not a Project. Council District 4. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated September 27, 2006, recommending adoption of the resolution.

7.2 (Cont'd.)

Action: Upon motion by Council Member Reed, seconded by Council Member LeZotte and carried unanimously, [Resolution No. 73465](#), entitled: "A Resolution of the Council of the City of San José Appointing the Bay Area Water Supply and Conservation Agency as Authorized Representative of the City in Discussions/Negotiations with San Francisco for an Agreement to Provide a Non-interruptible Reliable Supply of High Quality Water at a Fair Price", was adopted. (9-0-2. Absent: Cortese, Yeager.)

7.3 **Approval of the master agreement with ADS Environmental Services, Inc. for consultant services for the flow monitoring of the City's Sanitary Sewer System from the date of execution to December 31, 2010, in a total amount not to exceed \$1,500,000. CEQA: Exempt, File No. PP05-274. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated September 27, 2006, recommending approval of the master agreement.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Williams and carried unanimously, the master agreement was approved (10-0-1. Absent: Cortese.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 7:05 p.m. to consider Item 9.1 in a Joint Session.

9.1 (a) **Approval to consider the recommendation in (b-d) below pursuant to the Early Distribution Process Rules (2/3 vote required).**

Action: Upon motion by Council Member Williams, seconded by Vice Mayor Chavez and carried unanimously, approval to consider the recommendation was granted.

(b) **Approval of a \$2 million line of credit for the San José Repertory Theatre (REP) under the following conditions:**

- (1) **REP submits a draft business plan on or before December 31, 2006;**
- (2) **REP provides written documentation by December 31, 2006 that it will achieve the contributed income projections of approximately \$1.5 million-\$2 million for the current fiscal year;**
- (3) **REP complies with all of the terms and conditions of the loan contained in Appendix A of the report; and**
- (4) **If approved, adopt a resolution authorizing the City Manager to negotiate and execute a loan agreement with the REP in an amount not to exceed \$2 million.**

(Item continued on the next page)

- 9.1 (c) **If action is taken to approve the line of credit for the San José Repertory Theatre:**
- (1) **Authorize utilization of the newly-created Arts Stabilization Fund, approved as part of the City Manager's 2005-2006 Annual Report and the associated appropriation ordinance, Item 3.4 on this Agenda;**
 - (2) **Adopt an amendment to the annual appropriation ordinance in the General Fund to:**
 - (a) **Establish an appropriation in City Wide, City Manager's Office;**
 - (b) **Decrease the contingency reserve by \$2 million.**

CEQA: Not a Project. (City Auditor/City Manager's Office)
(Deferred from 9/12/06 – Item 9.1 and 10/3/06 – Item 9.1)

Documents Filed: (1) Memorandum from Council Member Williams, dated October 16, 2006, recommending approval of the staff recommendation. (2) Memorandum from City Attorney Richard Doyle, dated September 26, 2006, outlining the background. (3) Memorandum from City Manager Les White, dated October 5, 2006, recommending approval of the staff recommendation. (4) Memorandum from City Auditor Gerald Silva, dated October 5, 2006, transmitting the Office of the City Auditor's audit.

Senior Deputy City Manager Kay Winer outlined the Staff recommendations. City Auditor Gerald Silva summarized the Audit Council questions and comments followed.

Public Comment: Speaking in support of the recommendation were Chris Worrall and Nick Nichols (San José REP), Scott Knies (San José Downtown Association) and Dan Fenton (Team San José). Ross Signorino expressed concerns about the potential financial impacts to the City.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried, [Resolution No. 73466](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Loan Agreement with San José Repertory Theatre in an Amount Not To Exceed \$2 Million" and [Ordinance No. 27891](#) were adopted, as amended, with the condition that subject to the City Manager's satisfaction that a full analysis be prepared examining options for partnerships with the American Musical Theatre (AMT), Team San José, and possibly others that would help the REP save money and pare down the debt. (10-0-1. Absent: Cortese.).

Discussion continued regarding the Arts Stabilization Fund (port of Item 3.4 deferred for further discussion).

Action: Upon motion by Council Member Williams, seconded by Council Member Campos and carried, the Council established the Arts Stabilization Fund in the amount of \$4 million dollars, as recommended by the City Manager, and Staff was directed to reach out to the Arts Commission as to how the City deals with long term issues like surplus TOT and the use of this fund. (9-1-1. Noes: Gonzales. Absent: Cortese.)

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session action(s) of October 17, 2006:

A. Authority to Pursue Appellate Review in a Litigation Case:

Case Name: San José Silicon Valle Chamber of Commerce Political Action Committee, et al. v. City of San José, et al.

Adverse Party or parties: San José Silicon Valley Chamber of Commerce Political Action Committee, an unincorporated association; COMPAC Issues Fund, sponsored by the San José Silicon Valley Chamber of Commerce, an unincorporated association

Substance of Litigation: An action for violation of civil rights and temporary, preliminary and permanent injunctive relief enjoining Defendants from enforcing SJMC 12.06.310

Council Vote: Ayes: Campos, Chirco, Cortese, LeZotte, Nguyen, Pyle, Williams, Yeager; Gonzales.

Noes: None.
Disqualified: None.
Absent: Chavez, Reed.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9725	SE corner of E Virginia and S 2 nd Streets	3	Virginia St. Investors	1 Lot/10 Units	SFAR	Approve
9795	NW corner of Old Oakland Rd. and Rock Ave.	4	Taylor Woodrow Homes	1 Lot/98 Units	SFAR	Approve
9835	NE corner of Samaritan Dr. and Clydelle Ave.	9	Summerhill Homes	108 Lots/202 Units	SFDR& MFAR	Approve

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9861	SE corner of Northern Rd. and Cross Wy.	6	Shwe Groups, LLC	1 Lot/1 Unit	MFA
9862	Easterly of Hervey Ln., 230' S of Padres Dr.	6	Pinn Bros. Const.	25 Lots/19 Units	SFD
9863	NE corner of N. Capitol Ave. and Grandview Dr.	4	Pinn Bros. Const.	6 Lots/46 Units	MFA

NOTICE OF CITY ENGINEER'S AWARD OF CONSTRUCTION PROJECTS

On October 25, 2005, City Council approved a one year pilot program that delegated authority to the Director of Public Works to award or reject bids on construction projects where the base contract amount is below \$1,000,000. In accordance with this policy, the following is a list of projects that were awarded or rejected by the Director of Public Works in September 2006

AWARD:

<u>Project Name</u>	<u>Council District</u>	<u>Contractor</u>	<u>Contract Award Amount</u>	<u>Award Date</u>
Singleton Rd. Landfill Flaring System	7	LFG Control Corp.	\$231,500	9/8/06
Greater Gardner Street Reconstruction	6	Golden Bay Const.	\$741,913	9/22/06

OPEN FORUM

- (1) Mark Trout presented religious points of view.
- (2) Robert Apgar voiced personal observations.
- (3) George Fokos expressed personal viewpoints.
- (4) Arzhang Kalbali and Raul Medina requested assistance with the McKee Green Plaza project.
- (5) Ross Signorino offered a suggestion that the Council Agenda reference the television station channel number upon which viewers can watch the meetings.

ADJOURNMENT

The Council of the City of San José was adjourned at 8:05 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/10-17-06MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>

JOINT COUNCIL/REDEVELOPMENT AGENCY ITEM

The Joint Redevelopment Agency Board convened at 8:07 p.m. to consider Items 8.1 in a Joint Session.

- 8.1 (a) **Adoption of a resolution by the Agency Board:**
- (1) **Authorizing the issuance of Merged Area Redevelopment Project Tax and Allocation Bonds, in two or more series (tax exempt and taxable) in an aggregate principal amount not to exceed \$88,000,000 (“2006 Bonds”); and approving in substantially final form the Ninth Supplemental Indenture of Trust with Union Bank, as Trustee;**
 - (2) **Authorizing the competitive sale of the 2006 Bonds;**
 - (3) **Approving in substantially final form the Preliminary Official Statement (POS), Notice of Intention to Sell Bonds and Official Notices Inviting Bids and authorizing Agency staff to distribute the POS;**
 - (4) **Authorizing all officers, agents and employees to take such actions and execute such documents necessary and desirable to accomplish issuance of the 2006 bonds;**
 - (5) **Authorizing the Executive Director to purchase municipal bond insurance and surety bonds for the 2006 Bonds.**
- (b) **Adoption of a resolution by the Redevelopment Agency Board authorizing the Executive Director to purchase a surety bond to replace the funded reserve for outstanding Series 2003 for a period of not to exceed December 31, 2008.**
- (c) **Adoption of a resolution by the City Council approving the issuance of Merged Area Redevelopment Project Tax Allocation Bonds, in two or more series (tax exempt and taxable) in an aggregate principal amount not to exceed \$88,000,000.**

[MERGED]

Documents Filed: (1) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated October 17, 2006, recommending adoption of resolutions. (2) Supplemental memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated October 17, 2006, providing additional information and transmitting the Preliminary Official Statement.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Yeager and carried unanimously, Redevelopment Agency Resolution Numbers and [Resolution No. 73467](#), entitled: “A Resolution of the Council of the City of San José Approving the Issuance and Sale of Not to Exceed \$88,000,000 Combined Aggregate Principal Amount of Redevelopment Agency of the City of San José Merged Area Redevelopment Project Tax Allocation Bonds, Series 2006A and Redevelopment Agency of the City of San José Merged Area Redevelopment Project Taxable Tax Allocation Bonds, Series 2006A-T”, were adopted. (10-0-1. Absent: Cortese.)

The Council of the City of San José, and Redevelopment Agency Board adjourned at 8:10 p.m.